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tory and surrounding circumstances of each act. Since each surplus land statute and the reservation it affected must be individually analyzed under the *DeCoteau* rationale, it appears that litigation will continue until the boundaries of reservations affected by each surplus land statute have been determined. Many earlier decisions in which in-depth analyses of congressional intent were not performed will undoubtedly be relitigated. This is of particular significance to states such as North Dakota,[68] where cases involving surplus land statutes prior to *DeCoteau* were decided with little if any reference to the congressional history and surrounding circumstances of the surplus land statute involved.[69] At least in *DeCoteau*, courts have been provided with the guidance needed to determine the effect a particular surplus land statute had on the boundaries of the reservation involved.

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INDIANS—JURISDICTION—INDIVIDUAL CONSENT TO STATE JURISDICTION BY RESERVATION INDIAN INEFFECTIVE.

In December, 1971, an automobile accident occurred on a North Dakota state highway within the boundaries of the Fort Totten Indian Reservation. The non-Indian plaintiff commenced an action against the defendant, an enrolled member of the Turtle Mountain Band of Chippewa Indians, in state district court. Subsequent to commencement of the action, the defendant signed a document consenting to the

68. North Dakota, on behalf of itself and nine other states, filed a brief Amici Curiae for the respondent state court in *DeCoteau*. Brief for the state of North Dakota *et. al.* as Amici Curiae, DeCoteau v. District County Ct. for Tenth Jud. Dist., 420 U.S. 425 (1975). (The nine states were California, Idaho, Iowa, Montana, Nebraska, Nevada, New Mexico, Wisconsin, and Washington). In its brief, the State of North Dakota noted:

> These States have all experienced the difficult nagging problems of the questionable status of certain geographical areas which were at one time In dian Reservations but later were deemed non-reservation areas and recently designated as Indian reservations again. This creates a monumental problem with law enforcement and also with the status of lands within the area particularly for the non-Indian landowners.

Id. at 1.

The Indian tribe's counterargument centers around their right of sovereignty and a desire to have jurisdiction remain in the tribe. This right of self-government was the paramount concern in Justice Douglas' dissent in DeCoteau v. District County Ct. for Tenth Jud. Dist., 420 U.S. 425, 460-68 (1975).

69. Although the case must be analyzed on its own merits, there are several factors in the recent *Rosebud* decision which *may* be of significance in the determination of whether *New Town* will be relitigated in the near future: (1) *Rosebud* is the first Eighth Circuit case to extensively examine legislative history and circumstances—*New Town*, wherein the result was opposite of that in *Rosebud*, made little use of such information. (2) One of the acts (Act of May 30, 1910, ch. 260, 36 Stat. 448) interpreted in *Rosebud* was passed by Congress only two days before the Act of June 1, 1910, ch. 264, 36 Stat. 455 involved in *New Town*. (3) The provisions of these two acts are very similar though not identical. (4) The state of North Dakota's concern over the present status of surplus lands opened on reservations. *See* note 68 *supra*.

civil jurisdiction of North Dakota state courts.[1] The plaintiff obtained a default judgment, and service of Notice of Default was served upon the North Dakota Highway Commissioner to initiate action against the state's Unsatisfied Judgment Fund.[2] Counsel for the Fund appeared on behalf of the defendant and moved to dismiss the action on the grounds that, because the defendant was an enrolled member of an Indian tribe residing on a reservation, she was not subject to the jurisdiction of state courts. The case came to the North Dakota Supreme Court upon certification of questions of law[3] by the district court concerning the issue of civil jurisdiction over an Indian defendant. The North Dakota Supreme Court *held* that the individual Indian's acceptance of jurisdiction was ineffective as a means of obtaining civil jurisdiction, since such a procedure did not comply with provisions of the Civil Rights Act of 1968.[4] The court further *held* that the state had no residuary jurisdiction[5] because this area of civil jurisdiction had been completely preempted by the federal law. *Nelson v. Dubois*, 232 N.W.2d 54 (N.D. 1975).

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1. N.D. CENT. CODE § 27-19-05 (1974), provides in part:

> An individual Indian may accept state jurisdiction as to himself and his property by executing a statement consenting to and declaring himself and his property to be subject to state civil jurisdiction as herein provided. Such jurisdiction shall become effective on the date of execution of such statement. . . .

2. Every North Dakota vehicle owner pays each year, along with a vehicle registration fee, one dollar for purposes of providing a fund from which plaintiffs in automobile negligence actions can collect judgments against defaulting or insolvent defendants. N.D. CENT. CODE § 39-17-04 (1972), provides that when a plaintiff initiates an action to collect from the Unsatisfied Judgment Fund,

> [T]he attorney general may enter an appearance, file a defense, appear by counsel at the trial, or take such other action as he may deem appropriate on behalf and in the name of the defendant, and may thereupon, on behalf and in the name of the defendant, conduct his defense, and all acts done in accordance therewith shall be deemed to be acts of the defendant.

3. Nelson v. Dubois, 232 N.W.2d 54, 55-56 (N.D. 1975). The relevant questions were:
(1) whether the procedure for individual acceptance of jurisdiction in N.D. CENT. CODE § 27-19-05 (1974) (quoted at length in note 1, *supra*) was valid under The Civil Rights Act of 1968, 25 U.S.C. §§ 1321-26 (1970) (see note 4 *infra*) : and
(2) whether the state courts had residuary jurisdiction over the action.

Jurisdiction over Indian affairs belongs primarily to the federal government. F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 89 (1942). In areas where Congress does not exercise control, jurisdiction lies with the tribes. *Id.* at 122.

The concept of residuary state jurisdiction was developed by the Montana Supreme Court in State *ex rel.* Iron Bear v. District Ct., 162 Mont. 335, 512 P.2d 1292 (1973). The court in that case ruled that when Congress had not preempted state jurisdiction, and the tribe was not exercising jurisdiction in a particular area, the state could assert its own jurisdiction in this "residual area." *Id.* at 343, 512 P.2d at 1299.

A concurring justice in that decision, however, argued that the residual jurisdiction remained with the tribe, whether or not the tribe chose to exercise it. He noted that the only reason the state could exercise jurisdiction over the Indian defendant was because the tribe had ceded its jurisdiction to the state; the state had no residuary jurisdiction of its own. *Id.* at 346, 512 P.2d at 1300.

The Montana court has not subsequently discussed the concept of residuary jurisdiction; rather it seems to have chosen to follow the interpretation expressed in the concurring opinion. *See* Bad Horse v. Bad Horse, 163 Mont. 445, 450, 517 P.2d 893, 897 (1974).

4. 25 U.S.C. § 1326 (1970). This section of the Civil Rights Act defines the procedure whereby a state may assume jurisdiction over reservation Indians:

> State jurisdiction acquired pursuant to this subchapter . . . shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. . . .

5. For a definition of residual jurisdiction, see note 3 *supra*.

The extent to which states can assert civil jurisdiction over enrolled reservation Indians has long been in doubt. In *Worcester v. Georgia*,[6] the United State Supreme Court ruled that Indian tribes are "distinct, independent, political communities"[7] in which state laws have no force except by consent of the tribes themselves, or by the authority of treaties or acts of Congress.

As a prerequisite for admission to the Union, Congress required many states, including North Dakota, to include a disclaimer of all jurisdiction over Indian lands in their acts of statehood.[8] Some states also included a disclaimer clause in their state constitututions.[9]

Congress has frequently departed from this rule of exclusive federal authority over Indian lands, however.[10] At times, Congress has acted to confer limited jurisdiction upon the states over certain Indian lands and specific jurisdictional matters.[11] In 1953, Congress embarked upon a policy which would terminate federal preemption of jurisdiction over Indians.[12] Public Law 280,[13] enacted in that year, allowed states to assume jurisdiction over reservation Indians by affirmatively legislating to accept it.[14] Under this Act, states could unilaterally assume jurisdiction over Indians without the consent of the tribes wihin their borders.[15]

In 1963 the North Dakota legislature acted to accept Public Law

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6. 31 U.S. (6 Pet.) 515 (1832).

7. *Id.* at 559.

8. *E.g.*, Act of Feb. 22, 1889, ch. 180, 25 Stat. 676 (admission of Montana, Washington, North Dakota, and South Dakota); Act of July 16, 1894, ch. 138, 28 Stat. 107 (Utah); Act of June 20, 1910, ch. 310, 36 Stat. 557 (New Mexico and Arizona).

9. N.D. CONST. art. XVI, § 203 (1960), originally read: "[S]aid Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States. . . ." In 1958 an amendment added: "[P]rovided, however, that the Legislative Assembly of the state of North Dakota may, upon such terms and conditions as it shall adopt, provide for the acceptance of such jurisdiction as may be delegated to the state by act of Congress. . . ."

10. *See* discussion of congressional action in Organized Village of Kake v. Egan, 369 U.S. 60, 72-74 (1962).

11. *See, e.g.*, Act of May 31, 1946, ch. 279, 60 Stat. 229, in which North Dakota was granted concurrent jurisdiction over criminal offenses occurring within the boundaries of the Devils Lake Sioux Indian Reservation.

12. H.R. Con. Res. of Aug. 1, 1953, 67 Stat. B132, stated:

> Whereas, it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States. . . .

13. Act of Aug. 15, 1953, ch. 507, 67 Stat. 590.

14. *Id.* at § 7, provided:

> The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

15. H. FEY & D. MCNICKLE, INDIANS AND OTHER AMERICANS 200 (1st ed. rev. 1970), states:

> It is especially noteworthy that President Eisenhower, in consenting to Public Law 280, expressed concern over the failure to provide for consultation with the Indian people and urged that Congress, in its next session, amend the law to correct this oversight.

A consent procedure was not provided until the Civil Rights Act of 1968 was enacted. Act of April 11, 1968, Pub. L. No. 90-284, tit. IV, § 402, 68 Stat. 78 (codified at 25 U.S.C. § 1326 (1970). Section 1326 is quoted at length in note 4 *supra*.

280 jurisdiction over Indians in the state.[16] It was provided by statute that acceptance by a tribe[17] or by an individual Indian[18] was a prerequisite for state assumption of civil jurisdiction, although the granting of such consent was not required by Public Law 280. Later that year the North Dakota Supreme Court held in *In re Whiteshield,*[19] that

> The [practical] effect of this legislation is to completely disclaim State jurisdiction over civil causes of action arising on an Indian reservation unless the Indians themselves have acted to accept jurisdiction in the manner provided by the statute.[20]

Title IV of the 1968 Civil Rights Act[21] amended Public Law 280 by providing that state civil jurisdiction over actions involving Indian defendants and arising within reservation boundaries could thereafter be assumed only after the tribe had voted in a special election to consent to the state's assertion of jurisdiction.[22]

The individual acceptance procedure[23] adopted in North Dakota became questionable in light of the 1968 Civil Rights Act, and although the procedure was not directly challenged until *Nelson v. Dubois,* the North Dakota Supreme Court did express doubt as to its effectiveness in a 1974 decision.[24]

Other means of obtaining jurisdiction over Indian parties at variance with the Civil Rights Act procedures have also been held ineffective. In *Kennerly v. District Court of Montana,*[25] the United States Supreme Court held that a 1967 Blackfeet tribal law granting jurisdiction to the state was insufficient to vest civil jurisdiction in the state in light of the provisions of the 1968 Civil Rights Act. The Court found that the only valid means for obtaining jurisdiction was through affirmative legislation on the part of the state accepting civil jurisdiction, coupled with the granting of consent by the tribe, voting in a special election for that purpose.[26]

Noting the congressional intent manifested in the procedures in The Civil Rights Act of 1968, and relying upon the ruling in *Kennerly,*

16. N.D. CENT. CODE §§ 27-19-01 to -13 (1974).
17. N.D. CENT. CODE § 27-19-02 (1974).
18. N.D. CENT. CODE § 27-19-05 (1974) (quoted at length in note 1 *supra*).
19. 124 N.W.2d 694 (N.D. 1963).
20. *Id.* at 698.
21. Act of April 11, 1968, Pub. L. No. 90-284, title IV, 82 Stat. 78, (codified at 25 U.S.C. §§ 1321 to -1326 (1970)).
22. *Id. at* § 1326 (quoted at length in note 4 *supra*).
23. N.D. CENT. CODE § 27-19-05 (1974). *See* note 1 *supra.*
24. Rolette County v. Eltobgi, 221 N.W.2d 645 (N.D. 1974). Although the issue of consent was not involved in this case, the court suggested that the passage of the Civil Rights Act of 1968 "probably makes our statute . . . ineffective for the purpose of allowing individuals general acceptance of jurisdiction." *Id.* at 647.
25. 400 U.S. 423 (1971).
26. *Id.* at 427, 429.

the court in *Nelon v. Dubois* held that "[a]n individual defendant is no more able to confer jurisdiction upon the state than is a tribal council or a State, acting unilaterally."[27] Since the Civil Rights Act requires a vote of the tribe to confer jurisdiction on the state, the North Dakota provision for individual Indian consent was held invalid.[28]

The court then considered the existence of residuary state jurisdiction, a concept discussed in the Montana case of *State ex rel. Iron Bear v. District Court.*[29] The Montana Supreme Court in *Iron Bear* developed this concept by applying the "interference test" adopted by the United States Supreme Court in *Williams v. Lee.*[30] In *Williams,* a non-Indian who operated a store on a reservation sued an Indian in state court to collect for goods sold on credit. The Court found that "absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them."[31] Where both the tribe and the state have a valid interest in the subject matter of the action, the Court held, the state may assert jurisdiction only if Congress has not defined the state jurisdictional power in the area involved, and if action by the state would not interfere with tribal government.[32] The exercise of state jurisdiction in *Williams* was found to unduly conflict with the interest of the tribal government in transactions occurring on the reservation.[33]

At issue in *Iron Bear* was a 1938 Assiniboine Sioux tribal enactment[34] ceding jurisdiction over marriage and divorce actions to the state. On the basis of this cession by the tribal council, the Montana court held that acceptance of jurisdiction would not infringe upon tribal self-government.[35] Since the tribe had ceased to exercise jurisdiction over marriage and divorce actions between its members, the court concluded that the state could exercise its residuary jurisdiction[36] if Congress had not restricted state action in that area.[37]

The Montana court found that no Act of Congress governed divorce among reservation Indians. The disclaimer in Montana's En-

27. 232 N.W.2d at 57.
28. *Id.*
29. 162 Mont. 335, 512 P.2d 1292 (1973).
30. 358 U.S. 217 (1959).
31. *Id.* at 220. This principle was later extended to tort actions. Kain v. Wilson, 83 S.D. 482, 161 N.W.2d 704 (1968). The *Williams* test has usually been applied in actions between a non-Indian plaintiff and an Indian defendant. McClanahan v. Arizona State Tax Comm'n., 411 U.S. 164, 179 (1973).
32. *Id.* at 220-21.
33. *Id.* at 223.
34. The tribal enactment is quoted from in 162 Mont. 335, 337-38, 512 P.2d 1292, 1294 (1973). Montana had not by affirmative legislation acted to accept Public Law 280 jurisdiction. Although this tribal law was enacted prior to both Public Law 280 and the Civil Rights Act of 1968, its effectiveness may be questioned under the standard established in Kennerly v. District Court of Montana, 400 U.S. 423 (1971). *See* text accompanying note 25 and 26 *supra.*
35. 162 Mont. 335, 243, 512 P.2d 1292, 1297 (Mont. 1973).
36. See note 3 *supra.*
37. 162 Mont. 335, 346, 512 P.2d 1292, 1296 (1973).

abling Act[38] was found to apply only to matters involving Indian lands and not to matters involving individual Indians. The court relied in part on the North Dakota case of *Vermillion v. Spotted Elk*[39] for this interpretation. The Montana court concluded that "some pre-existing state jurisdiction remained after Public Law 280"[40] as to matters involving individual Indians, and that the state could thus exercise its residuary jurisdiction over divorce actions between enrolled reservation Indians.[41]

The *Vermillion* decision relied upon by the Montana court was overruled by the North Dakota Supreme Court in *Gourneau v. Smith*,[42] a month before the decision in *Iron Bear*. The court in *Gourneau* held that the disclaimer in North Dakota's constitution was applicable to matters involving individual Indians as well as to those involving their lands.[43] The Civil Rights Act of 1968 was held to apply to any civil jurisdiction covered by the disclaimer.[44] Since the disclaimer was held to apply to actions involving personal rights of Indians in *Gourneau*, the Civil Rights Act was found in *Nelson v. Dubois* to be a "governing Act of Congress" under the *Williams* "interference test."[45] The court was thus required to hold that North Dakota has no residuary jurisdiction over civil actions in which the defendants are enrolled reservation Indians.[46]

In dissent Justice Vogel stated that he would have held in favor of residuary jurisdiction.[47] Tribes in North Dakota, he noted, require

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38. *Id.* at 342, 512 P.2d at 1296. The Act of Feb. 22, 1889, ch. 180, 25 Stat. 676, applied to the admission of both Montana and North Dakota. Montana's disclaimer thus contains the same language disclaiming jurisdiction over Indian lands as that in North Dakota's constitution. See note 9 *supra*.

39. 85 N.W.2d 432 (N.D. 1957).

40. State *ex rel.* Iron Bear v District Court, 162 Mont. 335, 342, 512 P.2d 1292, 1296 (1973).

41. *Id.* at 345, 512 P.2d at 1298.

42. 207 N.W.2d 256 (N.D. 1973). This case involved an automobile accident occurring on a North Dakota reservation between two enrolled Indians. The defendant in this action did not consent to state jurisdiction, however.

43. *Id.* at 258.

44. 25 U.S.C. § 1324 (1970).

45. 232 N.W.2d 54, 58 (N.D. 1975). The court noted:

> The *Williams* test of 'infringement' or 'interferrence' has, for all practical purposes, been abandoned. Public Law 90-284 [The Civil Rights Act of 1968] applies to the assumption of jurisdiction by any State over any Indian reservation and as to any subject matter. It is difficult to envision a clearer statement of federal preemption. *Id.*

46. *Id.* at 56.

47. *Id.* at 60. Justice Vogel's dissent was based in part on an Eighth Circuit decision, Poitra v. Demarrias, 502 F.2d 23 (8th Cir. 1974). That case involved an automobile accident between Indians on the Standing Rock Reservation in North Dakota. (This reservation extends into both North Dakota and South Dakota). The Indian plaintiff was a resident of the portion of the reservation located in North Dakota, and the Indian defendant was a resident of the South Dakota portion of the reservation. The Eighth Circuit exercised diversity jurisdiction over the matter, even though North Dakota state courts had no jurisdiction over the action. However, the court suggested that North Dakota state courts might have implied residuary jurisdiction over Unsatisfied Judgment Fund cases. The court, making this suggestion, relied upon the concept of residuary jurisdiction as developed in State *ex rel.* Iron Bear v. District Court, 162 Mont. 335, 512 P.2d 1292 (1973), (see note 3 *supra*), which has been deemed inapplicable in North Dakota. *Compare* Iron Bear, *supra*, *with* Gourneau v. Smith, 207 N.W.2d 256 (N.D. 1973).

their members to comply with state highway laws and vehicle registration laws; thus Indian drivers contribute to the state's Unsatisfied Judgment Fund.[48] Justice Vogel argued that "[t]his is indicative of an intention on the part of the Tribe to acquiesce in certain limited state jurisdiction on the reservation."[49]

The decision in *Nelson v. Dubois* follows a tendency evident in modern cases to place greater emphasis on federal preemption rather than on the concept of inherent Indian sovereignty.[50]

The unfortunate result of decisions such as *Nelson v. Dubois* is to deny many plaintiffs a forum for their actions against reservation Indian defendants.[51] No tribe in North Dakota has as yet elected to accept state jurisdiction under the Civil Rights Act of 1968;[52] thus the state's courts are closed to actions against Indian defendants. A plaintiff's sole remedy, then, would be to proceed in tribal court.[53] However, as a general rule, North Dakota tribal codes limit tribal court jurisdiction to actions involving less than $300 when a non-Indian is involved.[54] Thus non-Indian plaintiffs are in many cases denied redress even in a tribal court. In addition, federal courts are not generally available for Indian litigation involving personal rights,[55] al-

48. Poitra v. Demarrias, 502 F.2d 23, 29 n.10 (8th Cir. 1974). For an explanation of North Dakota's Unsatisfied Judgment Fund, see note 2 *supra*.

49. 232 N.W.2d 54, 60 (N.D. 1975). It could be argued that a tribe cannot impliedly consent to state jurisdiction. Initially it has been recognized that a tribe may cede only a portion of its jurisdiction, and that jurisdiction once ceded can be withdrawn. Kennerly v. Dist. Ct. of the Ninth Judicial Dist. of Montana, 400 U.S. 423, 429-30 & n.6 (1971). Further, the procedure in the Civil Rights Act of 1968, 25 U.S.C. § 1326 (1970) provides only for affirmative cession by the tribe through an election. This would seem to preclude any implied waiver from being effective to confer any jurisdiction on a state.

50. *See, e.g.*, McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973); Bad Horse v. Bad Horse, 163 Mont. 445, 517 P.2d 893 (1974).

In discussing the shift in emphasis, the United States Supreme Court in *McClanahan* stated:

> The Indian sovereignty doctrine is relevant, then, not because it provides a definitive resolution of the issues in this suit, but because it provides a backdrop against which the applicable treaties and federal statutes must be read. It must always be remembered that the various Indian tribes were once independent and sovereign nations. . . .

McClanahan, supra, at 172.

In the *Bad Horse* decision, the Montana Supreme Court branded the concept of Indian sovereignty a "myth". Bad Horse, supra at ——, 517 P.2d at 897.

Former President Nixon in a 1970 address to Congress urged that body to repeal its policy of termination of federal jurisdiction over reservation Indians which had been adopted in 1953 (see note 12 *supra*). PRESIDENT RICHARD NIXON, THE AMERICAN INDIANS, H.R. Doc. No. 363, 91st Cong., 2nd Sess. (1970). Congress has not re-asserted federal authority over Indians to the extent that such authority was exercised prior to 1953.

51. Indian plaintiffs, in actions against Indian defendants, are subject to the same disabilities that deny non-Indian plaintiffs a remedy in state courts. *See* Gourneau v. Smith, 207 N.W.2d 256 (N.D. 1973). On the other hand, it has long been recognized that state courts are open to Indians as plaintiffs against non-Indians. *See* Felix v. Patrick, 145 U.S. 317 (1892); Bonnet v. Seekins, 126 Mont. 24, 243 P.2d 317 (1952); Vermillion v. Spotted Elk, 85 N.W.2d 432 (N.D. 1957). *See also* F. COHEN, FEDERAL HANDBOOK OF INDIAN LAW 379 (1942).

52. 1 NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION, JUSTICE AND THE AMERICAN INDIAN, THE IMPACT OF PUBLIC LAW 280 UPON THE ADMINISTRATION OF JUSTICE ON INDIAN RESERVATIONS 93 (1973).

53. *See* Williams v. Lee, 358 U.S. 217 (1959); Kain v. Wilson, 83 S.D. 482, 161 N.W.2d 704 (1968).

54. *See, e.g.*, The Devils Lake Sioux Tribal Code of the Fort Totten Indian Reservation, ch. I, § 1.2(c); The Code of Justice of the Standing Rock Sioux Tribe § 1.2(c).

55. *See* Hot Oil Service, Inc. v. Hall, 366 F.2d 295 (9th Cir. 1966); Littel v. Nakai, 344

though the scope of federal jurisdiction in this area is presently unclear in the Eighth Circuit.[56]

There are several possible ways in which this situation might be remedied. The tribes could, for example, take the initiative by altering their jurisdictional limitations regarding non-Indian plaintiffs.[57] Failing tribal action, a solution might be found through reliance on Title II of the Civil Rights Act of 1968.[58] In *Schantz v. White Lightning*,[59] the Eighth Circuit stated that "tribal exclusion of non-Indians [from tribal court] may well be said to violate the equal protection and due process clauses of the Indian Civil Rights Act of 1968."[60] This argument, however, has not been advanced by other courts, nor has a non-Indian plaintiff thus far successfully alleged federal court jurisdiction on the basis of this provision.[61]

Perhaps the most practical solution lies in congressional action accepting the challenge issued by *Nelson v. Dubois* and other decisions which reluctantly deny a forum to non-Indian plaintiffs. Congressional grants of jurisdiction to the states have, in the past, tended to weaken tribal governments.[62] The desirable goal in solving the problem presented in *Nelson v. Dubois* would be to provide a forum for non-Indian plaintiffs *and* to protect tribal self-government within the same piece of legislation. The Civil Rights Act of 1968 should be amended to require that tribal courts be available to non-Indian plaintiffs for all suits against Indian defendants. The additional responsibility might work to re-strengthen tribal governments and to increase their efficiency. If the tribe does not choose to accept this responsibility, it could still consent to state jurisdiction over such actions. Whenever disputes arise between Indians and non-Indians, each party must be provided with a means to obtain an adequate remedy.

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F.2d 486 (9th Cir. 1965), *cert. denied*, 382 U.S. 986 (1966).

56. *See* Poitra v. Demarrias, 502 F.2d 23 (8th Cir. 1974); Schantz v. White Lightning, 502 F.2d 67 (8th Cir. 1974).

57. Assertion of general jurisdiction by tribal courts over all claims arising on the reservation may not be desirable. If the *Williams v. Lee* interference test (see text accompanying note 31 *supra*) is reciprocal, the question might be raised whether general tribal court jurisdiction would unduly infringe upon state interests where both parties are non-Indians. It has been suggested that tribal courts might assume specific subject matter jurisdiction over claims which are closely connected with the reservation, through procedures similar to those utilized in state long arm statutes. Canby, *Civil Jurisdiction and the Indian Reservation*, 1973 UTAH L. REV. 206, 223.

58. 25 U.S.C. § 1302 (1970).

59. 368 F. Supp. 1070 (D.N.D. 1973), *aff'd*, 502 F.2d 67 (1974).

60. *Id.* at 70. The Indian Civil Rights Act referred to by the court is Title II of the Civil Rights Act of 1968.

61. *Id.* at 70.

62. *See* PRESIDENT RICHARD NIXON, THE AMERICAN INDIANS, H.R. Doc. No. 363, 91st Cong., 2d Sess. (1970).